

ESTTA Tracking number: **ESTTA111676**

Filing date: **11/28/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

| | | | |
|---------|---|-------------|---------------|
| Name | Debbie, LLC | | |
| Entity | Limited Liability Company | Citizenship | Massachusetts |
| Address | 501 Arborway Boston, MA 02130 UNITED STATES | | |

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|---------|---|-------------|---------------|
| Name | Bicon, LLC | | |
| Entity | Limited Liability Company | Citizenship | Massachusetts |
| Address | 501 Arborway Boston, MA 02130 UNITED STATES | | |

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|----------------------|--|--|--|
| Attorney information | Joel D. Leviton Fish & Richardson P.C. 60 South Sixth Street Suite 3300 Minneapolis, MN 55402 UNITED STATES tmdoctc@fr.com, leviton@fr.com, jal@fr.com Phone:612-335-5070 | | |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 78876594 | Publication date | 11/28/2006 |
| Opposition Filing Date | 11/28/2006 | Opposition Period Ends | 12/28/2006 |
| Applicant | Implant Innovations, Inc. 4555 Riverside Drive Palm Beach Gardens, FL 33410 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 010.

All goods and services in the class are opposed, namely: Dental implants, dental implant abutments and parts and fittings therefor

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| Attachments | 2006-11-28 Notice of Opposition.pdf (5 pages)(104019 bytes) |
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| | |
|-----------|-------------------|
| Signature | /Joel D. Leviton/ |
| Name | Joel D. Leviton |
| Date | 11/28/2006 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DEBBIE, LLC AND BICON, LLC,

Opposers,

v.

IMPLANT INNOVATIONS, INC.,

Applicant.

In the matter of Serial No. 78/876,594

For the mark NANOTITE

Published on November 28, 2006

Opposition No.: _____

NOTICE OF OPPOSITION

Debbie, LLC, a Massachusetts limited liability company, and Bicon, LLC, a Massachusetts limited liability company, both having a principal place of business at 501 Arborway, Boston, Massachusetts 02130, believe they will be damaged by registration of the mark shown in intent-to-use Application Serial No. 78/876,594 (the "Application") and hereby oppose the same pursuant to the provisions of 15 U.S.C. § 1063.

The grounds for opposition are as follows:

1. Opposer Bicon, LLC ("Bicon") is a leading provider of dental implants. Opposer Debbie, LLC owns the intellectual property, including trademarks, used by the related company Bicon with the authority of Debbie, LLC. Bicon and Debbie, LLC are collectively referred to as "Opposers."
2. Applicant seeks to register NANOTITE as a trademark for "Dental implants, dental implant abutments and parts and fittings therefor" in International Class 10.
3. The Application was filed on May 4, 2006 and has been designated Serial No. 78/876,594.

4. The Application was published for opposition in the Official Gazette on November 28, 2006.
5. Upon information and belief, Applicant has not filed an allegation of use in connection with the Application.
6. Upon information and belief, prior to the May 4, 2006 filing date of the Application, Applicant had not commenced use of the designation NANOTITE as a trademark for dental implants, dental implant abutments and parts and fittings therefor.
7. Upon information and belief, Applicant cannot rely on a priority date prior to May 4, 2006.
8. Prior to the Application filing date, Opposers adopted the NANOTITE trademark for dental implants.
9. Prior to the Application filing date, Bicon had transported dental implants in packaging bearing the NANOTITE trademark.
10. Prior to the Application filing date, Bicon used the NANOTITE trademark on dental implants.
11. Prior to the Application filing date, Bicon had transported in commerce dental implants in packaging bearing the NANOTITE trademark.
12. Prior to the Application filing date, Bicon used in commerce the NANOTITE trademark for dental implants.
13. Prior to the Application filing date, Bicon made a bona fide use of the NANOTITE trademark in the ordinary course of trade.
14. Opposers' common law rights precede the filing date of the Application and, upon information and belief, any priority date upon which Applicant may rely.

15. On August 31, 2006, Opposer Debbie, LLC filed a use-based application to register its NANOTITE trademark (Application Serial No. 76/665,445).

16. On September 29, 2006, Applicant filed suit against Opposers and Opposers' related companies in the United States District Court for the Southern District of Florida for trademark infringement and related claims alleging Opposers' use of the NANOTITE trademark infringes Applicant's rights.

17. In Applicant's complaint for trademark infringement, Applicant alleges that Applicant and Bicon are direct competitors.

18. In Applicant's complaint for trademark infringement, Applicant alleges that Opposers' use of the NANOTITE trademark is likely to cause confusion as to the source of Bicon's products.

19. Applicant's proposed NANOTITE trademark is identical to Opposers' previously used NANOTITE trademark.

20. The goods identified in the Application are identical to the types of goods Bicon offers under the NANOTITE mark.

21. Upon information and belief, Applicant intends to sell NANOTITE dental implants and abutments in the same channels of trade through which Bicon has previously promoted and sold and currently promotes and sells NANOTITE dental implants.

22. Upon information and belief, Applicant intends to sell NANOTITE dental implants and abutments to the same types of customers and potential customers to which Bicon previously promoted and sold and currently promotes and sells NANOTITE dental implants.

23. Applicant acknowledges that concurrent use of the NANOTITE trademark by Applicant and Opposers in connection with their respective goods is likely to cause confusion in the dental implant market.

24. Opposers have priority over Applicant.

25. Applicant's proposed NANOTITE trademark so resembles Opposers' previously adopted and used NANOTITE trademark as to be likely, when used in connection with the goods identified in the Application, to cause confusion, to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products Applicant allegedly intends to offer under the NANOTITE trademark are produced, sponsored, endorsed, or approved by Opposers, or are in some way affiliated, connected, or associated with Opposers, all to the detriment of Opposers. Registration of Applicant's mark, therefore, should be refused under 15 U.S.C. §§ 1052(d) and 1063.


26. Registration of the proposed NANOTITE trademark would be a further source of damage to Opposers, as it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Opposers' prior use of the NANOTITE trademark.

WHEREFORE, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, Opposers respectfully request that Application Serial No. 78/876,594 in International Class 10 be rejected, and that registration of the mark therein for the goods therein specified be refused.

Please charge the opposition fee to the Deposit Account of Fish & Richardson P.C.,
Account No. 06-1050, making reference to 18471-003PP1.

Respectfully submitted,

Date: 11/28/06



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